IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 14

LLOYD C. DUNCAN,

Petitioner,

vs.

DUKE PAOA KAHANAMOKU, SHERIFF OF THE CITY AND COUNTY OF HONOLULU,

Respondent

MEMORANDUM ON BEHALF OF PETITIONER

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MEMORANDUM ON BEHALF OF PETITIONER

This memorandum, submitted for the convenience of the court, consists of two parts, first a chronology and second a partial digest of General Orders Nos. 1 to 181 covering the period December 7, 1941 to January 30, 1943, which is Exhibit "V" in evidence but which is not in the printed record. The record references in this memorandum are to the printed record in *Ex parte Duncan*, No. 14, unless otherwise indicated. Record references to *Ex parte White*, No. 15, are indicated thus: (White R. —).

I

Chronology

December 7, 1941: (a) Hawaii Defense Act (Act 24, Special Session, S. L. Hawaii 1941) invoked.

(b) Privilege of writ of habeas corpus suspended and martial law proclaimed (R. 12).

(c) Lt. Gen. Walter C. Short proclaims himself "Military Governor of Hawaii" (R. 58).

(d) Governor Poindexter wires the President "I have today declared martial law throughout the Territory of Hawaii and have suspended the privilege of the writ of habeas corpus. Your attention is called to section 67 of the Hawaiian Organic Act for your decision on my action. Poindexter."

(e) Provost courts and military commissions established for the trial of civilians for offenses "against the laws of the United States, the laws of the Territory of Hawaii or the rules, regulations, orders or policies of the military authorities" (White R. 79).

December 8, 1941: Territorial courts closed by order of Lt. Gen. Walter C. Short (White R. 81).

December 9, 1941: The President wired Governor Poindexter: "Your telegram of December 7th received and your action in suspending the writ of habeas corpus and placing the Territory of Hawaii under martial law in accordance with U. S. C. title 48 section 532 has my approval. Franklin D. Roosevelt" (R. 61).

December 16, 1941: G. O. 29 authorized the opening of the courts except for jury trials, subpoenaing of witnesses, or the issuance of a writ of habeas corpus (White R. 82-85).

December 17, 1941: General Short replaced by General Delos C. Emmons who proclaimed himself "the Military Governor of Hawaii" (R. 63).

December 22, 1941: Roberts Commission arrives in Hawaii (Senate Document 159, 77th Cong., 2d sess.).

January 27, 1942: G. O. No. 57 authorized the courts "as agents of the Military Governor" to exercise their normal functions except for jury trials, writs of habeas corpus, and other specified cases (White R. 86-88).

February 19, 1942: Petition for writ of habeas corpus filed in *Ex parte Zimmerman*, 132 Fed. (2d) 442; petitioner released, case rendered moot, 319 U. S. 744.

March 21, 1942: The act of Congress creating military areas and authorizing regulations by military commanders approved (56 Stat. 173).

June 2-6, 1942: Japanese defeated at Midway and threat of invasion of Hawaii lifted (R. 670); see also Biennial report of the Chief of Staff of the United States Army (1943) 14, House Document No. 288, 78th Cong., 1st sess.

July 23, 1942: President appoints Federal Judge Ingram M. Stainback Governor of Hawaii (R. 821).

August 25, 1942: Harry E. White tried for embezzlement in provost court (White R. 15-16).

October 16, 1942: Hawaii designated as a military area pursuant to Executive Order No. 9066 and 56 Stat. 173.

December —, 1942: Governor Stainback negotiates with War; Justice and Interior Departments for termination of martial law (R. 880-4).

January 1, 1943: General Emmons declares "Hawaii safe * * * against any invasion the Japanese currently may be able to organize" (R. 1142).

February 8, 1943: Governor Stainback issues proclamation restoring civil authority in Hawaii (R. 14); General Emmons issues similar proclamation (R. 17).

February 17, 1943: Territory Legislature in session (S. L. Hawaii 1943).

March 10, 1943: Civil authority restored in Hawaii; General Emmons revokes Military Orders 1 to 181 inclusive and issues new orders as "Military Governor" (R. 94-363).

June 1, 1943: General Emmons relinquishes position "as Military Governor" (R. 66) and Lt. Gen. Robert C. Richardson, Jr., assumes "all the powers and duties held, possessed, assumed, imposed upon and exercised" by General Emmons (R. 69).

July 30, 1943: Petitions for writs of habeas corpus filed in *Ex Parte Seifert*, U. S. D. C. (Haw.) No. 296; *Ex Parte Glockner*, U. S. D. C. (Haw.) No. 295, petitioners released and case rendered moot (Govt. brief, *Ex parte Duncan*, p. 17).

August 25, 1943: General Richardson issues G. O. No. 31 threatening United States District Judges, clerks, marshal, lawyers, and others with fine or imprisonment for filing petitions for writs of habeas corpus (R. 1097-1105).

November 23, 1943: Gilbert Islands captured by our forces (R. 628).

January 31, 1944: Admiral Chester W. Nimitz proclaims himself Military Governor of the Marshall Islands (R. 748).

March 2, 1944: Lloyd C. Duncan tried for assault in provost court at Pearl Harbor (R. 11).

March 14, 1944: Petition for writ of habeas corpus filed on behalf of Lloyd C. Duncan (R. 4).

April 13, 1944: Opinion of United States District Judge Delbert E. Metzger (R. 384).

April 14, 1944: Petition for writ of habeas corpus filed on behalf of Harry E. White (White R. 4-5).

April 20, 1944: Judgment granting writ of habeas corpus in *Duncan* case (R. 403).

May 2, 1944: Decision of United States District Court Judge J. Frank McLaughlin in *Ex Parte White* (White R. 57-73) and judgment entered (White R. 92).

May 18, 1944: Petition for writ of habeas corpus, *Ex Parte Fred Spurlock* (Petition for certiorari, No. 841, October Term 1944); rendered moot by the release of petitioner.

October 24, 1944: Proclamation of President Roosevelt, No. 2627, terminating martial law (9 Fed. Reg. 12831).

Proclamation of the Governor of Hawaii terminating martial law (Government brief 85).

November 1, 1944: Decision of the Circuit Court of Appeals for the Ninth Circuit in *Ex Parte Duncan* and *Ex Parte White* (R. 1187-1231).

II

The following is a partial digest of General Orders Nos. 1 to 181, covering the period December 7, 1941 to January 30, 1943, all of which were enforced in the provost courts and governed the conduct of the civil population of Hawaii:

G. O. No.	*Date*	*Subject*
2	December 7, 1941	Saloons closed.
4	December 7, 1941	Created military tribunals for the trial of civilians.
6	December 8, 1941	Schools closed.
7	December 8, 1941	Established the "Office of the Military Governor."
14	December 10, 1941	Censorship of press and radio.
16	December 11, 1941	Blackout and curfew.
24	December 14, 1941	Regulated retail stores, physicians, dentists and veterinarians in connection with the purchase and sale of medical supplies.
27	December 15, 1941	Rationing of gasoline.
29	December 16, 1941	Authorized the courts to perform certain functions "exercised by them during the existence of civil government." (White R. 82-85)
38	December 20, 1941	Freezing labor and wages.
42	December 24, 1941	Opened places of amusement.
43	December 24, 1941	No parking on certain streets.
44	December 26, 1941	Regulation of cold storage, cloth in bolts, the Hawaii Territorial Guard, narcotics, and intoxicating liquor.
49	January 6, 1942	Blackout, traffic control, parking, rent control, newspapers.
50	January 9, 1942	Authorized opening of certain schools; extended hours of amusement places to include Sundays; regulated pinball machines.
51	January 9, 1942	Prohibited the possession by any person of currency in excess of $200.00.
52	January 14, 1942	Authorized labor on Sundays; regulated solicitors.
53	January 15, 1942	Sale of food; control of fuel oil.

G. O. No.	Date	Subject
54	January 20, 1942	Issuance of gas masks; traffic, appointment of trial judge advocate; regulated the conduct of dogs; regulated the hours of business and places of amusement.
55	January 21, 1942	Ordered the United States Marshal to turn over a vessel in his custody; ordered an inventory of food; and regulated the sale and distribution of tires and automobile parts.
56	January 26, 1942	Registration of all males over 18 ordered to report to U. S. Employment Service; regulated the sale of seed; stated the organization of the "Office of the Military Governor."
57	January 27, 1942	Regulated imports into Hawaii; permitted the opening of Territorial courts as "agents of the Military Governor," but prohibited trial by jury, sessions of the grand jury, or the issuance of any writ of habeas corpus (White R. 86-88).
58	January 28, 1942	Regulated poultry and cattle feed.
59	January 29, 1942	Regulated the printing and circulation of newspapers and magazines.
65	February 3, 1942	Extended the curfew till 8 p. m. for pedestrians other than enemy aliens; blackout regulations remained in effect.
66	February 3, 1942	Decreed daylight saving time, blackout hours; extended curfew till 9 p. m. for pedestrians; regulated the hours of opening and closing of business and places of amusement.
68	February 4, 1942	Authorized the sale of liquor in bars and purchase by individuals under permit system.
71	February 7, 1942	Curfew for children; changed city ordinances in regard to one-way streets and left turns.
72	February 10, 1942	Regulated the payment of rent for housing accommodations.
73	February 11, 1942	Designated February 11 to 18, "emergency cleanup week" for Honolulu; plan for evacuation of civilians in emergency; changed one-way streets.
74	February 16, 1942	Regulated radios.
75	February 19, 1942	Established price control of food and seeds.
79	February 27, 1942	Permits for shipment of food.
80	February 27, 1942	Epidemic disease and vaccination program.
81	February 28, 1942	Required livestock and poultry census.

G.O. No.	Date	Dubject
82	March 4, 1942	Ordered U. S. Marshal to surrender vessel in his custody.
83	March 10, 1942	Prohibited actions for recovery of real estate.
88	March 19, 1942	Regulated slaughter of hogs.
89	March 25, 1942	Regulated blackout, traffic, bus stops, poisons, and "carriage of information to mainland."
91	March 31, 1942	Regulated labor, wages, hours, employment.
94	April 4, 1942	Regulated sale of intoxicating liquors.
96	April 10, 1942	Regulated use of denatured tallow in making soap.
101	April 30, 1942	Regulating interisland travel, speed limits, loading zones, blackout, curfew, children, civilian hospitals.
104	May 15, 1942	Prohibited wearing of khaki clothes by civilians.
108	May 29, 1942	Price control.
113	June 5, 1942	Removal of keys from parked cars; child labor.
117	June 20, 1942	Blackout hours; hours for restaurants, bowling alleys and moving picture theatres.
118	June 25, 1942	Regulations relating to issuance and use of United States currency.
120	June 26, 1942	Suspended holidays and premium pay.
121	June 30, 1942	Regulated collapsible tin tubes; movement of contractors' equipment; and pork.
122	July 1, 1942	Provost courts; and collection and disposal of swill; dry garbage and rubbish in Honolulu.
129	July 28, 1942	Lighting; white fenders; nationals of Hungary and Rumania.
130	August 3, 1942	Taxicabs.
132	August 17, 1942	Motor vehicle traffic during blackout.
133	August 31, 1942	Jurisdiction of civil courts (Govt. brief *Ex parte Duncan*, pp. 86–90).
134	September 1, 1942	Blackout, pedestrian traffic, vehicular traffic, interisland travel, central identification bureau, intoxicating liquors, and gambling devices.
135	September 4, 1942	Jurisdiction of civil courts (Govt. brief *Ex parte Duncan*, pp. 91–95).
136	September 9, 1942	Regulated numbering of houses in Honolulu.
137	September 11, 1942	Rubbish and cleanup program; blackout hours.
144	September 29, 1942	Staggered hour plan for business and schools.
149	October 29, 1942	Restrictions on use of zinc oxide and sale of industrial alcohol.

G. O. No.	Date	Subject
152	November 5, 1942	Registration of females over sixteen and requirement for registration with the USES.
154	November 7, 1942	Chlorination of water in Hawaii.
166	December 22, 1942	Registration of laboratories.
167	December 30, 1942	Regulation of bowling alleys and moving picture theatres.
170	January 5, 1943	Parking regulations.
174	January 18, 1943	Penalties for false statements to military authorities.
175	January 21, 1943	Lifting restrictions on lighted cigars, cigarettes and pipes during blackout.
177	January 28, 1943	Requiring solicitors circulating among the public to register.
181	January 30, 1943	Regulating the shipment of food.

On February 8, 1943, proclamations were issued by the Governor of Hawaii and the "Military Governor" which became effective on March 10, 1943, at which time all existing General Orders 1 to 181, inclusive, were revoked, and a new set of General Orders was issued, which are found in the Record, pp. 94-362. None of the orders was submitted to the Governor prior to issuance or approved by him (R. 829).

Dated at Washington, D. C., December 14, 1945.

Respectfully submitted,

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